

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Promoting Technological Solutions to Combat)
Contraband Wireless Device Use in Correctional)
Facilities)

GN Docket No. 13-111

**COMMENTS OF THE
TENNESSEE DEPARTMENT OF CORRECTION**

The Tennessee Department of Correction (“TDOC”) hereby respectfully submits these comments in response to the *Report and Order and Further Notice of Proposed Rulemaking* (“*FNPRM*”) released by the Federal Communications Commission (“Commission”) on March 24, 2017 in the above-captioned docket.¹ As the *FNPRM* correctly acknowledges, contraband wireless devices in correctional facilities pose a serious – and escalating² – threat to the safety of the general public, correctional facility employees, and inmates. The TDOC asks the Commission to amend the proposed rule to authorize the deployment of jamming technology and to provide stringent measures to ensure carrier cooperation with future technologies. TDOC would also ask that the Commission encourage our partners in the wireless communications arena to pursue and make available geo location technology that could be used to effectively fence correctional facilities, thereby either blocking and/or identifying signals originating from contraband wireless devices. The Commission is uniquely positioned as both convener and regulator to foster and facilitate cooperation and collaboration between the wireless industry and

¹ *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Red 2336 (2017) (“*FNPRM*”).

² See, e.g., *id.* at 2394 (noting that “[t]he use of contraband wireless devices by inmates has grown within the U.S. prison system parallel to the growth of wireless device use by the general public”); *id.* (citing U.S. Gov’t Accountability Office, Report to Congressional Committees, Bureau of Prisons: Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection, GAO-11-893 (Sept. 2011) for the proposition that the number of confiscated cell phones in correctional facilities more than doubled between 2008 and 2010); see also *Contraband Wireless Devices*, FCC (May 25, 2017), <https://www.fcc.gov/contraband-wireless-devices> (“In recent years, the use of contraband wireless devices by inmates in correctional facilities across the country has grown rapidly.”).

the correctional community. Working together, the Commission, the wireless industry, and the correctional community must develop effective new and lower cost technological solutions to proactively address the contraband cellphone crisis, which continues to intensify as wireless devices become more pervasive in everyone's day-to-day life. TDOC applauds the steps taken by the Commission to date with respect to this rapidly growing problem, and urges the agency to utilize this *FNPRM* proceeding to continue to advance the public interest.

**I. CONTRABAND CELLULAR DEVICES IN CORRECTIONAL FACILITIES
POSE A SERIOUS AND GROWING THREAT TO PUBLIC SAFETY,
CORRECTIONAL FACILITY EMPLOYEES, AND INMATES**

There is near universal agreement that the use of contraband wireless devices in correctional facilities is a serious problem that is rapidly growing. As Chairman Pai explained last year in a speech specifically addressing contraband devices in correctional facilities, in “the hands of inmates, contraband cellphones are *weapons*” used “to run drug operations, direct gang activity, order hits, extort money from inmates’ families, defraud the elderly, and harass innocent members of the public.”³ Commissioners on both sides of the aisle have acknowledged the severe threat contraband wireless devices pose, and they have uniformly voiced support for prompt regulatory action to mitigate this threat.⁴ However, while the Commission has the authority to authorize the jamming of **illegal** wireless device signals, it has not yet done so. It is our desire that you will consider authorizing the use of jamming technology and that you require wireless carriers to cooperate and participate in the development of jamming and geo-fencing technologies as both would provide a **low cost 100% solution** for this problem. Jamming geo-

³ Ajit Pai, Commissioner, FCC, Remarks at Contraband Cellphone Field Hearing, Columbia, SC, at 2 (Apr. 6, 2016) (emphasis added) (“Pai Contraband Cell Phone Speech”).

⁴ *FNPRM*, 32 FCC Rcd at 2434 (Statement of Commissioner O’Rielly) (“We all can agree that cellphones in the hands of prisoners can result in criminal and dangerous activities.”); *id.* at 2432 (Statement of Commissioner Clyburn) (“Contraband wireless devices are illegal, and are a safety threat, both to those behind, and outside prison walls. I wholeheartedly support this Commission doing all we can to help law enforcement combat the serious threat these devices, in the wrong hands, enable.”).

fencing technology is currently available for a fraction of the cost of managed access systems and provides the only sure method of disrupting the use of illegal cellphones in correctional environments. Tests of jamming technology by the South Carolina Department of Corrections have proven this solution can be implemented without interfering with authorized calls near or adjacent to the facilities which opponents of jamming have long cited as the reason for their opposition.⁵

Dating back to the opening of the above-captioned docket with a 2013 *Notice of Proposed Rulemaking*,⁶ the Commission has received four years' worth of valuable input on the real harms contraband devices in correctional facilities cause. Acting on this record, the Commission took appropriate initial steps in March of this year to address the problem by streamlining the process for the deployment of Contraband Interdiction Systems⁷ and appointing an ombudsperson for issues related to combating contraband wireless devices.⁸ However, these steps alone are not sufficient. The threat not only remains – it continues to grow. TDOC recovered roughly 2400 contraband cellular devices in 2016, and more than half of these were connected to a known security threat group.⁹ Moreover, in the first five months of 2017, TDOC has already recovered 950 contraband wireless devices. In addition, efforts to smuggle cellular devices into correctional facilities are becoming increasingly brazen. For example, TDOC recently disrupted an effort to introduce 50 contraband cellular devices at once into a correctional

⁵ “Inmate Cell Phone Use and Endangers Prison Security and Public Safety”, Office of the Inspector General, David R. Shaw, Inspector General, State of California, May 2009.

⁶ *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 6603 (2013).

⁷ FNPRM, 32 FCC Rcd at 2345-57 ¶¶ 21-55.

⁸ See *Wireless Telecommunications Bureau Names Ombudsperson for Issues Related to Combating Contraband Wireless Devices*, Public Notice, 32 FCC Rcd 2053 (2017).

⁹ *Prison Contraband Interdiction Strategy Yields Multiple Arrests*, Tenn. Dep’t of Corrections (May 7, 2017, 7:43 PM), <https://www.tn.gov/correction/news/50309>.

facility. Further exacerbating the problem, inmates have begun using small Bluetooth devices to make calls over connected-but-remotely-hidden contraband cellphones. As a result, correctional facility employees are forced to attempt to locate ever-smaller adjunct devices being used by inmates for illegal communications, as well as the connected contraband cellphones that may be hidden at another location entirely. Such systematic concealment makes successful searches and seizures all the more difficult. The issue has grown in severity to the point that in April of this year TDOC appointed its first Chief Interdiction Officer, Lee Dotson, to help fight prison contraband generally, including contraband wireless devices.

Yet, as the Chairman correctly noted, notwithstanding the correctional community's best efforts, "corrections officers just can't keep every single cellphone out of prisons."¹⁰ Despite TDOC's aggressive efforts,¹¹ contraband cellphones still end up in the hands of inmates. For example, last month a widow in Tennessee had to face bragging Facebook posts by her husband's convicted killer, who posted to Facebook using a contraband device.¹² In another instance earlier this month, a Tennessee man convicted of murdering his wife with a hammer similarly used a contraband device to inflict serious emotional pain on his victim's loved ones.¹³ The Commission's record in this proceeding is replete with similar tales of contraband devices

¹⁰ Ajit Pai, Commissioner, FCC, Remarks at Contraband Cellphone Field Hearing, Columbia, SC, at 2 (Apr. 6, 2016) (emphasis added) ("Pai Contraband Cell Phone Speech").

¹¹ See, e.g., *Contraband Arrests*, Ten. Dep't of Correction, <https://www.tn.gov/correction/topic/tdoc-state-prison-contraband-arrests> (last visited June 9, 2017).

¹² *Prison Posts: A Convicted Killer Taunts Family on Social Media from Prison*, WMC Action News 5 (May 24, 2017, 11:06 PM), <http://www.wmcactionnews5.com/story/35490147/wednesd>.

¹³ Jeremy Finley, *Prisoners Smoke Joints, Show Off Phones in Prison Videos*, WSMV 4 (June 7, 2017, 7:22 PM), <http://www.wsmv.com/story/35614712/prisoners-smoke-joints-show-off-phones-in-prison-videos>.

furthering intimidation, violence, and crime – against other inmates, against officers of the law (even in their own homes),¹⁴ and against the general public.¹⁵

As it always does in such situations, TDOC acted expeditiously in the instances described above to recover the contraband wireless devices and to prevent further harm from occurring. But a reactive approach to contraband cellphones is not sufficient. The correctional community needs jamming and geo-fencing technological tools to enable facilities to take a more effective, proactive approach to dealing with the problem of contraband cellphones. As the Chairman acknowledged last year in a speech specifically addressing contraband wireless devices, today's "status quo isn't acceptable."¹⁶ This is a technological problem with a scale which necessitates, at least in part, a technological solution. Currently, managed access solutions are complicated and expensive to implement with costs exceeding one million dollars per site and are ineffective. Streamlining the application process is appreciated, however, the cost of the licensing represents a very small percentage of the total cost and managed access is both easily defeated and an "after the fact" solution. Jamming technology exists today and requires no specialized hardware in order to operate making them very inexpensive to build and maintain. Jammers prevent any communications over the cellular network, preventing even short duration communications from occurring.

¹⁴ See, e.g., Letter from Leann K. Bertsch, President, Ass'n of State Correctional Admins., to Tom Wheeler, Chairman, FCC (Nov. 4, 2016), *available at* https://www.scribd.com/document/332583303/ASCA-Letter-to-FCC-Chairman#from_embed (detailing in part the shooting of a South Carolina corrections captain, who would survive to speak before the FCC during its approval of the *FNPRM*, and the kidnapping of a prosecutor's father, among other similar crimes enabled by contraband cell phones).

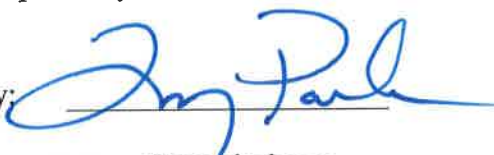
¹⁵ See, e.g., *FNPRM*, 32 FCC Rcd at 2338 ¶ 4 (citing Teresa Wiltz, *States Bedeviled by Contraband Cell Phones in Prisons*, Pew Charitable Trusts (June 7, 2016), (<http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/06/07/states-bedeveled-by-contraband-cellphones-in-prisons>) (noting, in one particular instance, the indictment of one inmate for using a contraband cell phone to order the murder of a 9-month-old baby)).

¹⁶ Ajit Pai, Commissioner, FCC, Remarks at Contraband Cellphone Field Hearing, Columbia, SC, at 2 (Apr. 6, 2016) (emphasis added) ("Pai Contraband Cell Phone Speech").

II. THE COMMISSION SHOULD FACILITATE AND FOSTER COLLABORATION BETWEEN THE WIRELESS INDUSTRY AND THE CORRECTIONAL COMMUNITY

In Chairman Pai's words, despite the growing threat contraband wireless devices in prisons pose, "good news" abides: "[T]here are technologies that law enforcement can use to help identify and shut down contraband cellphones."¹⁷ In light of the real and very serious harms discussed above, and in light of the ever-increasing threat that contraband wireless devices pose as wireless technologies proliferate in scope and function, the Commission must remain actively involved in addressing this issue to protect the public interest. At a minimum, the Commission, acting both as a neutral convener and a regulator, should mandate and facilitate good faith collaboration and cooperation between wireless carriers and the correctional community. Together, these two stakeholder groups must develop and deploy jamming and geo-location technology to effectively and proactively identify and surgically eliminate the threat of contraband cellphones in correctional facilities – to protect the general public, correctional facility employees, and inmates. The Commission is uniquely positioned to cause this to happen.

Respectfully submitted,

By: 

Tony Parker, Commissioner
State of Tennessee, Department of
Correction
6th Floor Rachel Jackson Building
320 Sixth Avenue North
Nashville, TN 37243
615.741.1000

June 19, 2017

¹⁷ Ajit Pai, Commissioner, FCC, Remarks at Contraband Cellphone Field Hearing, Columbia, SC, at 2 (Apr. 6, 2016) (emphasis added) ("Pai Contraband Cell Phone Speech").